

REMARKS

Claims 1-27, 30, 32 and 34-40 are currently pending in the subject application, and are presently under consideration. Claims 1-15, 19-21, 23-26, 30, 32 and 34-40 have been allowed. Claims 16, 17 and 27 stand rejected. Claims 18 and 22 have been indicated as allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 16, 18 and 22 have been amended.

Favorable reconsideration of the application is requested in view of the amendments and comments herein.

I. Interview Summary

Applicant's representative thanks the Examiner for the courtesy extended during a telephone interview on June 18, 2008. During the Interview, it was confirmed that reference to Perini in the Office Action was an error and that each such reference instead meant to refer to Yano. It was also agreed that that claim 16, as amended in Applicant's previous response, did positively recite that "each BTS is configured as a secondary BTS to monitor at least one additional frequency associated with an unassigned mobile unit."

During the interview, Applicant's representative and the Examiner also discussed U.S. Patent No. 6,563,806 to Yano, et al. ("Yano") in view of U.S. Patent No. 6,625,137 to Kang ("Kang") relative to independent claim 16. The Examiner suggested that claim 16 may be amended to overcome this rejection if further information about the contingency plan was recited. A proposed amendment for claim 13 was sent to the Examiner on June 20, 2008, via facsimile. As of the date of this response, no information regarding the proposed amendment had been received by Applicant's representative. Accordingly, this amendment and response has been prepared based on the Interview with the Examiner as well as claims already considered to be allowable or to contain allowable subject matter.

II. Rejection of Claims 16, 17 and 27 Under 35 U.S.C. §103(a)

Claims 16, 17 and 27 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,563,806 to Yano, et al. ("Yano") in view of U.S. Patent No. 6,625,137 to Kang

("Kang"). Withdrawal of this rejection is respectfully requested for at least the following reasons.

Claim 16 has been amended based on discussions with the Examiner. In particular, claim 16 has been amended to recite that the contingency plan includes communication parameters to facilitate communication between the given mobile unit and the at least one selected secondary BTS. Claim 16 also recites that the mobile unit employs at least a portion of the contingency plan to perform a soft handover from the primary BTS to a respective one the at least one selected secondary BTS.

The Office Action contends that the approach in Yano discloses that each BTS is capable of performing the function recited in claim 16, alleging that such recitation is not a positive limitation. Office Action at page 2, lines 17-21. As discussed in the interview on June 18, 2008, however, claim 16 does not recite that each BTS is capable of performing some function, as alleged in the Office Action, but instead recites that each BTS is configured to perform a particular function; namely, each BTS is configured as a secondary BTS to monitor at least one additional frequency associated with an unassigned mobile unit. Such functionality is not disclosed or suggested in Yano.

The Office Action is inconsistent regarding the teachings of Yano. In particular, at page 3, lines 1-11, the Office Action contradicts itself by stating (at lines 1-4) that Yano teaches a controller provides a contingency plan, but then (at lines 5-7), the Office Action admits that Perini (Yano) does not teaching such feature. Applicant discussed this briefly with the Examiner and it was determined that such discrepancy likely resulted from inadvertently cutting and pasting from a prior office action. Thus, it is presumed for this response that this feature is not present in Yano and that reliance for this feature is on Kang, specifically, citing Kang at Col. 11, line 20, through Col. 12, line 24, and FIGS. 11 and 12 of Kang. See Office Action at page 3, lines 7-11.

However, in sharp contrast to what is recited in amended claim 16, this portion of Kang refers to hand-off that is already in progress. Significantly, Kang mentions that when the mobile station connects to the first and second base stations through a soft handoff (i.e., handoff is already occurring) then the based station controller enables the mobile station to connect a plurality of supplemental code channels to the first and second base stations through a separate

control. Kang at Col. 11, lines 29-34. Moreover nothing in Kang teaches or suggests that the base station controller provides any information corresponding to a contingency plan to inform a given mobile unit as recited in amended claim 16. Instead, Kang, at Col. 11, lines 40-44, discloses that the base station controller sends a supplemental code channel request to a SCAP2 of the second base station. There is no description in Kang or other evidence in the record to support the position in the Office Action that Kang and Yano, individually or in combination, make the system of amended claim 16 obvious.

For the reasons described above, claims 16, 17 and 27 should be patentable over the cited art. Accordingly, withdrawal of this rejection is respectfully requested.

III. Allowable Subject Matter

Claims 18 and 22 have been indicated as allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 16, 18 and 22 have been amended as suggested in the Office Action. In particular, claims 18 have been rewritten in independent form including all of the limitations of the base claim 16. Accordingly, allowance of these claims is respectfully requested.

IV. Conclusion

In view of the foregoing remarks, Applicant respectfully submits that the present application, including claims 1-27, 30, 32 and 34-40, is in condition for allowance. Applicant respectfully requests reconsideration of this application and that the application be passed to issue.

If the Examiner has any questions or if the Applicant or its representative can be of any assistance in connection with prosecution of this application, the Examiner is invited and encouraged to contact the undersigned at the number identified below.

Fees for the rewriting of claims 18 and 22 into independent form are being charged to a Credit Card via separate transmittal. No other fees should be due for this amendment and response. However, please charge any deficiency or credit any overpayment in the fees for this amendment and response to our Deposit Account No. 20-0090.

Respectfully submitted,

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